that an order not to commit the contempt was an unheard of proceeding; that the prisoner's rights would not be jeopardized, for if the state of public feeling should render an impartial trial impossible, he would be granted a new trial.

Two judges dissented from the majority opinion, contending that the right of free speech should be limited by the constitutional power of the judiciary to insure litigants fair trials; and that while it might be going too far to enjoin the publication of an ordinary libel, a court should certainly be allowed to prevent all interference with the course of justice in a pending trial.

The argument of the dissenting judges seems to lead to the more satisfactory conclusion, and it is certainly a pity if it cannot be reconciled with the language of the Constitution. There is room for much false sentiment on the subject of free speech and other high-sounding natural rights of the freeborn citizen. No one would contend that the right of a man on trial for his life to secure justice should not rank paramount to the right of a theatrical manager to coin shekels by inflaming the popular mind against him. To compel the prisoner to go to the expense of a new trial or a change of venue is an unsatisfactory way out of the difficulty. The public interest may demand that a man shall generally be free to speak his thoughts; it certainly demands that the course of justice shall always run smooth.

THE "NEW WOMAN" IN COURT. — That a woman suing for divorce may be required to pay temporary alimony and solicitor's fees to her husband is the decision of the Circuit Court of Cook County, Illinois, in *Groth* v. *Groth*, reported in 7 Chicago Law Journal, 360. The *ratio decidendi* is, that, where changed circumstances bring a case within the reason of an old rule, the rule must be applied, though what seems a novel result is thereby attained.

It can hardly be questioned that the law administered in the Ecclesiastical Court of England, what may be called the common law of divorce, is law in this country. 1 Bishop, Mar., Div. & Sep. § 133. Temporary alimony was allowed in *North* v. *North*, 1 Barb. Ch. 241, without a statutory provision. The result then in the principal case is undoubtedly correct if the old ground for compelling the payment of alimony now exists in the woman's case as well as the man's. Bishop states as the reason for allowing it in the Ecclesiastical Court, "that the marriage has taken from the wife her property and vested it in the husband, leaving her when acting apart from or adversely to him in poverty." 2 Mar., Div. & Sep. § 922. This ground does not exist to-day in most jurisdictions, but the wife's right to temporary alimony in a proper case is too firmly established to be denied. If, then, as the court says, the wife "has been placed on an equality with her husband in respect to her personal and property rights," common fairness requires that it should be allowed to the husband too, and such a result is justifiable on the theory advanced by the court. While strict construction is the rule when a statute is in derogation of the common law, repeated legislation on a subject imbues the judges with the spirit of the change. So that ultimately, when questions come up which are not within the letter of the statutes, this effect is apparent in the manner in which they are treated. *Smart* v. *Smart*, [1892] A. C. 425, is an instance of this. At page 435 of the opinion, Lord Hobhouse does not hesitate to say that this is

done. It is to be noticed that in the principal case stress is laid on the Illinois statute, making a married woman equally liable with her husband for necessaries furnished to the family, provided she has a separate estate. This undoubtedly made it easier for the court to render the decision they did, but it is only one of the many statutes the spirit of which must be regarded.

There may readily be a difference of opinion as to whether the spirit of the laws so far enacted does justify the decision in the principal case. It may well be said that up to the present time statutes have merely sought to protect the wife from the power of her lord and master. However, so much has been justly said against the fairness of modern legislation, as removing woman's disabilities without imposing upon her the corresponding burdens, that it is rather refreshing to see this very legislation instrumental in imposing the "burdens" with a vengeance.

"GOLD CLAUSE" CONTRACTS. — The demand in the platform of one of our political parties that Congress enact legislation to prevent the demonetization of any kind of legal tender money by private contract, has occasioned some discussion as to the legal efficacy of "gold clause" contracts. Are contracts for money payable specifically in gold coin of the United States enforceable? Can Congress by retrospective legislation make nugatory such contracts already in existence?

As the law now stands, the answer to the first question is in no doubt. In *Bronson* v. *Rhodes*, 7 Wall. 229 (1868), the United States Supreme Court declared that a bond payable in gold and silver coin of the United States could not be satisfied by a tender of United States legal tender currency of the same nominal amount as the face of the bond. The *Legal Tender Cases*, 12 Wall. 457 (1870), established the validity of such a tender to discharge an antecedent debt payable in money generally, on the ground that such a contract contemplated payment in what was lawful money at the time of payment and not at the time of contracting. The court carefully guarded itself against overruling *Bronson* v. *Rhodes* (see 12 Wall. at p. 548), and a year later reaffirmed this latter decision in *Trebilcock* v. *Wilson*, 12 Wall. 687 (1871), where it explicitly declared the Legal Tender Act not applicable to contracts payable in other specific forms of money. A recent United States decision, *Woodruff* v. *Mississippi*, 162 U. S. 291, 16 Sup. Ct. Rep. 820, has been occasionally cited to the contrary during the past summer by careless writers. The court here, however, decided that the true construction of the contract made it payable, not in gold coin, but in money generally, so the point in question did not arise. 162 U. S. at p. 302, 16 Sup. Ct. Rep. at p. 824. At present, therefore, there can be no difficulty in enforcing "gold clause" obligations.

Nor is it probable that any act of Congress designed to destroy the effect of gold contracts already made would be held constitutional. The Fifth Amendment to the Constitution prohibits the United States from depriving any person of life, liberty, or property without due process of law. Retrospective legislation that impairs vested rights is a deprivation of property without due process of law within this prohibition. Cooley, Const. Lim., 6th ed., 431, 443; *Westervelt* v. *Gregg*, 12 N. Y. 202; *Streubel* v. *Ry.*, 12 Wis. 67; *Taylor* v. *Porter*, 4 Hill, 140, 145. What is meant by due process of law? "Undoubtedly a pre-existent rule of conduct, declarative of a penalty for a prohibited act; not an *ex post facto* rescript